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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 FLOTSAM OF CALIFORNIA, INC., dba
12 NOLAND'S ON THE WHARF and
SHORELINE SURF SHOP,

13 Plaintiff,

14 v.

15 HUNTINGTON BEACH CONFERENCE
AND VISITORS BUREAU,

16 Defendant
17 _____/

No. C 06-7028 MMC

**ORDER DENYING PLAINTIFF/
COUNTERDEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT;
VACATING HEARING**

18 Before the Court is plaintiff/counterdefendant Flotsam of California, Inc.'s ("Flotsam")
19 Motion for Partial Summary Judgment, filed November 21, 2007. Defendant/
20 counterclaimant Huntington Beach Conference and Visitors Bureau ("the Bureau") has filed
21 opposition, to which Flotsam has replied. Having read and considered the papers filed in
22 support of and in opposition to the motion, the Court deems the matter suitable for decision
23 on the papers, VACATES the hearing scheduled for January 11, 2008, and rules as
24 follows.

25 Flotsam seeks summary judgment on any claim the Bureau has made herein in
26 which the Bureau asserts ownership of a "Surf City" mark, as opposed to the Bureau's
27 claims based on the Bureau's asserted ownership of a "Surf City USA" mark. In response,
28 the Bureau argues that it is not claiming herein ownership of a "Surf City" mark.

1 Flotsam's counterclaims do not allege ownership of a "Surf City" mark.¹ Further,
2 there is no showing any discovery has occurred on any claim pertaining to a "Surf City"
3 mark. Finally, although Flotsam argues that, in the absence of a grant of summary
4 judgment on any claim based on the Bureau's ownership of a "Surf City" mark, Flotsam
5 could be subject in the future to a suit in which the Bureau claims ownership of a "Surf City"
6 mark, the Court lacks jurisdiction to resolve a matter not raised by the instant pleadings.
7 See Thomas v. Anchorage Equal Rights Comm'n, 220 F. 3d 1134, 1138 (9th Cir. 2000) (en
8 banc) (holding federal courts may not "issue advisory opinions" or "declare rights in
9 hypothetical cases").

10 Accordingly, the motion is hereby DENIED.

11 **IT IS SO ORDERED.**

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13 Dated: January 10, 2008

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15 MAKINE M. CHESNEY
16 United States District Judge
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24 ¹In Defendants Answer to First Amended Complaint [and] Counterclaims," filed
25 February 12, 2007, the Bureau alleges in ¶ 48 that "Flotsam's actions in designing,
26 manufacturing, packaging, selling, or distributing goods under the 'Surf City' mark, without
27 consent of the Bureau, constitutes false designation of origin and trademark infringement
28" Although such paragraph could be interpreted as alleging the Bureau owns the mark
"Surf City," the Bureau, on November 13, 2007, and in response to Flotsam's stated
concern as whether such a claim was being alleged, filed a "Notice of Errata" on November
13, 2007, stating that the phrase "'Surf City' mark" in ¶ 48 was a typographical error, and
that the intended phrase was "'Surf City USA' mark."